

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4107 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JIVRAJ RAGHABHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4107 of 1999
MRS DT SHAH for Petitioner No. 1
MR HS MUNSHAW for Respondents No. 3-4
Mr. H.C. Patel, Addl. GP for Respondents No. 1,2,5 &
6.
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/01/2002

ORAL JUDGEMENT

Heard learned advocate Mrs. D.T. Shah for the

petitioner and Mr. Munshaw, learned advocate for respondents no. 3 and 4 and Mr. H.C. Patel, learned AGP for respondents no. 1,2, 5 and 6.

The grievances raised by the petitioner in the present petition is to the effect that the respondent panchayat has denied the benefit of pension to the petitioner. A specific order has been passed by the respondent which is at Annexure G to the petition page 36 wherein it has been decided that the Government circular dated 8th January, 1976 is not applicable to the employees working on work charge establishment under the panchayats and the ports and, therefore, the petitioner is not entitled to pensionary benefits from the respondents.

According to the petitioner, he was appointed on work charge establishment as a clerk on a substantively clear and vacant post on 5th February, 1975 and, thereafter, his services were terminated by the respondent panchayat on 5th March, 1983 alongwith other employees and, therefore, an industrial dispute was raised being reference no. 1308 of 1984 before the labour court at Rajkot which was allowed by the labour court by passing common award dated 1.1.1987 wherein the respondent no.4 was directed to reinstate the petitioner and other employees with continuity and full back wages. Said award was challenged by respondent no.4 by filing special civil application no. 2986 of 1987 wherein this court by judgment dated 5.2.1988, modified the award to the extent of reducing back wages from 100 per cent to 50 per cent only by way of settlement. According to the petitioner, since the said judgment has not been implemented by the respondent no.3 and 4, the petitioner and other employees had filed recovery application claiming 100 per cent back wages which has been allowed by the labour court, Surendranagar. Against the said award, special civil application no. 2124 of 1997 was filed by respondents no.3 and 4 and this Court has by common judgment dated 11.4.1997 set aside the award passed in recovery application but nonetheless, petitioner and other employees were directed to be placed in regular running pay scale with corresponding pay scale with continuity and to give arrears and accordingly the petitioner and other employees were placed in running pay scale with continuity and arrears were also paid. Thereafter, the petitioner has been reinstated in service and has been getting regular salary. The petitioner and other workers had raised dispute by filing reference no. 133 of 1988 with a demand to make them permanent from the date of their appointment together with all benefits at

par with permanent employees, with arrears. Said reference was decided by the tribunal by order dated 25th March, 1997 and it was directed to the executive engineer, Irrigation Sub Division, Panchayat, Dhrangadhra to make these workmen permanent except the workmen who later on resigned from job with effect from 1st January, 1985 to carry out the notional pay fixation in their respect from 1.1.1985 to 31.12.1994 granting them usual annual increments. It was also directed that they should be given amount of arrears from 1.1.1995 onwards. In the said reference, name of the petitioner i.e. Jivraj R. Jadav has been mentioned as 'workman concerned' in pending reference. This award was challenged by the respondent panchayat before this court by filing special civil application no. 11200 of 1998 and this Court has rejected the said petition on 25th August, 2000 and, therefore, award made by the tribunal in favour of the petitioner that he should be made permanent with effect from 1.1.1985 is required to be implemented by the panchayat. However, one mistake has been committed that in the service book of the petitioner, date of permanency or confirmation is mentioned as 3rd March, 1988 and that is how the authority who has to take decision about the pensionary benefits has come to the conclusion that the petitioner has not completed ten years' period and, therefore, petitioner has been denied pension on such erroneous premise. This aspect would reveal from the affidavit in reply filed by the panchayat and, therefore, in view of these factual aspects of the matter, since the award made by the industrial tribunal in reference no. 133 of 1988 has been confirmed by this court, same is required to be implemented by the respondent panchayat by making appropriate entry to that effect in the service book of the petitioner.

Therefore, in view of these facts and circumstances of the case, it is directed to the respondent panchayat to make necessary entry in the service book of the petitioner of the date of permanency with effect from 1st January, 1985. Such an entry shall be made by the respondent panchayat in the service book of the petitioner within one month from the date of receipt of copy of this order. After such an entry is made by the respondent panchayat in the service book, it is directed to the respondent panchayat to immediately forward the papers to the assistant examiner, local fund, Surendranagar within fifteen days from the date of making of entry of date of permanency 1.1.1985 in the service book of the petitioner. After receiving papers from the respondent panchayat by the assistant examiner, local fund, Surendranagar, it is directed to the assistant

examiner, local fund, Surendranagar to consider the papers and pass appropriate orders and to forward the same to the respondent No. 6 director of pension and provident fund, within fifteen days from the date of receipt of such papers by him from the respondent panchayat. As and when such papers are received by the respondent No.6, it is directed to the respondent No. 6 to consider the proposals made by the assistant examiner, local fund, Surendranagar and to pass appropriate order by taking into account the date of permanency as '1.1.1985', the date of retirement as '30.11.1996' and to pass appropriate orders within one month from the date of receipt of such papers from the assistant examiner, local fund, Surendranagar.

Learned advocate Mrs. D.T. Shah has submitted that though amount of gratuity has been paid to the petitioner, complete amount has not been paid by the respondent panchayat. Learned advocate Mr. Munshaw appearing for the panchayat authorities has made a statement before this Court that if the amount has not been paid by the respondent panchayat as per the entitlement of the petitioner, then, the petitioner may make appropriate representation and if any such representation will be made by the petitioner, same shall be considered by the respondent panchayat authorities and appropriate orders will be passed in accordance with law. Considering these submissions, it is directed to the petitioner to make appropriate representation in this regard claiming for payment of the amount of gratuity and interest on such amount. As and when such representation is received by the respondent panchayat authorities, to consider the representation in respect of shortfall in payment of the amount of gratuity and to consider the grievance of the petitioner in that regard and to pass appropriate order in accordance with law within one month from the date of receipt of such representation from the petitioner.

With these observations and directions, this petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs. Direct Service is permitted.

17.1.2002. (H.K. Rathod, J.)

Vyas